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OF THE
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RE: *In re MultiPlan Corp. Stockholders Litigation*
C.A. No. 2021-0300-LWW

Dear Counsel:

This Letter Opinion resolves the defendants’ Motion for Extension of Deadline to Respond to Interrogatories (the “Motion for Extension”)¹ and the plaintiffs’ Cross-Motion to Compel and Strike (the “Cross-Motion to Compel”).² Argument on the motions, which are fully briefed,³ is unnecessary. The Motion for Extension is granted and the Cross-Motion to Compel is denied.

¹ C.A. No. 2021-0300-LWW, Dkt. 137 (“Defs.’ Mot.”).

² Dkt. 139 (“Pls.’ Mot.”).

³ See *supra* notes 1-2; see also Dkts. 140, 142.

The allegations at issue in this litigation are described in the court’s January 3, 2022 Opinion.⁴ In that Opinion, the court denied the defendants’ motions to dismiss claims against the former directors of, sponsor of, and financial advisor to a special purpose acquisition company. On February 17, the defendants filed their Answer to the Verified Class Action Complaint.⁵ Discovery (and a series of discovery disputes) ensued.

On August 31, the plaintiffs served their second set of interrogatories on the ten defendants—seven individuals and three business entities.⁶ The next day, the plaintiffs served an additional set of interrogatories on defendant The Klein Group, LLC.⁷ These interrogatories collectively seek responses to 86 questions (well over 100 counting subparts). By rule, the defendants’ responses were due on September 30 and October 3, respectively.⁸

“[B]y the week of September 26, it became clear” to the defendants that they would be unable to meet the response deadlines.⁹ The defendants asked the plaintiffs

⁴ Dkt. 44.

⁵ Dkt. 47.

⁶ Dkt. 109.

⁷ Dkt. 113.

⁸ See Ct. Ch. R. 33(b)(3); Ct. Ch. R. 6(a).

⁹ Defs.’ Mot. ¶ 2.

for a three-week extension until October 21. The plaintiffs countered with an offer of a ten-day extension. Because “work remain[ed] to be done, including verifying [the interrogatory responses] for accuracy and completeness,” the defendants again asked for an extension until October 21.¹⁰ No agreement was reached.¹¹ The Motion for Extension followed.

In opposing the Motion for Extension, the plaintiffs’ Cross-Motion to Compel seeks an order compelling the defendants to respond to the interrogatories within three days of the court’s ruling on that motion.¹² The plaintiffs also assert that the defendants’ “failure to respond” to certain interrogatives concerning the factual bases for the allegations and affirmative defenses in the Answer is “particularly troubling” given the defendants’ representations that the Answer had legal and evidentiary support.¹³ The plaintiffs ask that the affirmative defenses advanced in the Answer be stricken.

¹⁰ *Id.* ¶ 4.

¹¹ The plaintiffs offered to agree to the requested extension for some of the responses and to permit the defendants to serve unverified responses by October 10. *Id.* ¶ 4 n.1.

¹² Pls.’ Mot. ¶ 4.

¹³ *Id.* ¶ 5 (citing Ct. Ch. R. 11).

Court of Chancery Rule 6(b)(1) states that this court “for good cause shown may, at any time in its discretion . . . order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order”¹⁴ Good cause may be found where “the moving party has been generally diligent, the need for more time [is] neither foreseeable nor its fault, and refusing to grant the continuance would create a substantial risk of unfairness to that party.”¹⁵

The defendants have demonstrated good cause for a modification. They maintain that have been diligent in assembling the information needed to answer to the interrogatories, drafting responses, and verifying them with each defendant, as appropriate.¹⁶ That is no small task and will take time, particularly given the number of responding defendants and sheer volume of interrogatories.¹⁷

¹⁴ Ct. Ch. R. 6(b); *see Cantor Fitzgerald, L.P. v. Cantor*, 2001 WL 536911, at *2 n.11 (Del. Ch. May 11, 2001) (granting extension under Rule 6(b) to defendants where the cause for delay was benign and the plaintiff suffered no prejudice); Ct. Ch. R. 33(b)(3) (providing that “[t]he Court may allow a . . . longer time” than 30 days for parties to respond to interrogatories); Edward P. Welch et al., *Mergers & Acquisitions Deal Litigation Under Delaware Corporation Law* § 8.01[B][2] (2021) (“Extensions of time to respond to interrogatories may . . . be appropriate under certain circumstances.”).

¹⁵ *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1107 (Del. 2006).

¹⁶ Defs.’ Mot. ¶ 2.

¹⁷ The plaintiffs’ offer to allow the defendants to submit unverified interrogatory responses did not eliminate the defendants’ obligation to respond to 86 interrogatories.

The interrogatories at issue—the second round served on the defendants—are extensive. Rather than asking for the defendants to “disclose the sources of information and rudimentary basic facts that support the allegations in [their answer] and then flesh[ing] out the situation by going to the actual source by way of deposition,”¹⁸ many of the interrogatories seek substantive narratives. For example, the six individual defendants are asked to “state the factual basis” for “each defense or affirmative defense that [they] intend to assert in this Action” and for “each denial of allegations [they] assert in [the] Answer.”¹⁹ Other interrogatories ask for the identification of “all Documents” on a particular topic—including “all Documents consulted, referred to, or used in responding to the[] Interrogatories.”²⁰

¹⁸ *Lorch v. Dyson-Kissner-Moran*, 1995 WL 347784, at *2 (Del. Ch. May 31, 1995); *see also In re Pennzoil Co. S’holders Litig. Cons.*, 1997 WL 770663, at *2 (Del. Ch. Oct. 27, 1997) (“[T]he discovery process in the Court of Chancery should be carefully supervised to avoid wasteful duplication and to avoid the risk that discovery will become a strategic weapon, rather than a legitimate method to flesh out issues for the impending trial.”).

¹⁹ Pls.’ Mot. Ex. A at 19.

²⁰ *Id.*; *see also id.* at 18-19 (asking for the individual defendants to “Identify all Documents You understand, contend, or believe to be material to the determination of the value of Legacy MultiPlan and New MultiPlan including but not limited to any financial statements, budgets, proposed budgets, comparative analyses of projected and actual accounts, monthly management accounts, balance sheets, profit and loss statements, profit and cash flow forecasts, projections, valuations, appraisals, opinions, letters, reports, studies, or analyses”).

The plaintiffs opted to serve the sort of interrogatories that require significant efforts to answer. Providing the defendants a reasonable extension to complete them will not cause the plaintiffs prejudice. The October 21 deadline sought in the Motion for Extension coincides with the cutoff for the substantial completion of document discovery.²¹ It leaves ample time for depositions given that the fact discovery deadline is three months from now.²² The extension (which now amounts to nine days) will not delay this non-expedited case.

Accordingly, the Motion for Extension is granted. The defendants' responses to the second interrogatories are due on October 21, 2022.

The Cross-Motion to Compel, however, is denied. The defendants have not refused to provide responses to the interrogatories; they have asked for more time. Nor will the defendants' affirmative defenses be stricken. The so-called "Answer Interrogatories" (some of which were quoted above) were served more than six months after the defendants' Answer was filed. Though not ideal, a brief extension in view of that timing hardly warrants sanctions.²³

²¹ See Dkt. 106.

²² See *id.*

²³ See *Fitzgerald v. Cantor*, 1998 WL 409158, at *4 (Del. Ch. June 22, 1998) ("There is no basis to sanction defendants in this manner, as there is no evidence indicating they have

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Sincerely yours,

/s/ Lori W. Will

Lori W. Will
Vice Chancellor

cc: All Counsel of Record (via File & Serve*Xpress*)

behaved inequitably or with willful disregard of plaintiff's rights or that plaintiff suffered unfair prejudice.").